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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/886,868	06/21/2001	J. Richard Aylward	02103-413001/ AABOSS37	6086
26162	7590	02/24/2006	EXAMINER	
FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			PENDLETON, BRIAN T	
			ART UNIT	PAPER NUMBER
			2644	

DATE MAILED: 02/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/886,868	<b>Applicant(s)</b> AYLWARD ET AL.	
	<b>Examiner</b> Brian T. Pendleton	<b>Art Unit</b> 2644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8, 9, 11-23, 26, 27, 46-49 and 54 is/are pending in the application.
- 4a) Of the above claim(s) 7, 10, 24, 25, 28-45 and 50-53 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8, 9, 11, 12, 20-23, 48 and 49 is/are allowed.
- 6) ☒ Claim(s) 1-3, 26 and 46 is/are rejected.
- 7) ☒ Claim(s) 4-6, 13-19, 27, 47 and 54 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of Group I, Species I in the reply filed on 4/1/05 is acknowledged. The traversal is on the ground(s) that the search would not be burdensome. This was not found persuasive because asserting that subject matter from one searched invention would "likely" be uncovered in a search for another invention is not a valid argument. Furthermore, Applicant now traverses the requirement based on the allegation that Groups II and III together contain twelve claims and that those claims should be searched in connection with the search for Group I. As discussed in the previous Office Action, Groups II and III are DISTINCT inventions which are not patentable over each other. The fact that they only contain twelve claims is immaterial. It would be improper to search those inventions, which have separate classification, in connection with the signal processing method claimed in Group I.

The requirement is still deemed proper and is therefore made FINAL.

This application contains claims drawn to an invention nonelected with traverse. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01. Claims 7, 10, 24, 25, 28-45, and 50-53 must be cancelled. Claim 10 should have been withdrawn.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 26, and 46 are rejected under 35 U.S.C. 102(e) as being anticipated by

Waller, Jr.. In figure 1 Waller discloses an audio system with first and second audio signals (L-R, L). Figure 8 discloses the details of surround steering circuit 130 which divides L-R (the first audio signal) into two spectral bands through the use of filters 137 and 138. The first spectral band signal from filter 137 is scaled by voltage controlled amplifiers 139 and 140. VCA 139 has a first scaling factor related to  $L_{RHV}$ , which is related to the amplitude of L and R, specifically its difference (see figure 2, element 85 in the steering voltage generator 80). Thus, the first scaling factor is related to the amplitude of the first audio signal L-R. VCA 140 has a second scaling factor related to  $R_{RHV}$ , which is also related to L-R which is the related to the amplitude of the second audio signal L. The scaling factors affect the surround sound characteristics ( $L_0$  and  $R_0$ ) which is forward and rearward in nature. Claims 1, 3, 26, and 46 are met. Regarding claim 2, the second scaling factor is proportional to the amplitude of L-R which is the first audio signal.

#### ***Allowable Subject Matter***

Claims 8, 9, 11, 12, 20-23, 48, and 49 are allowed.

Claims 4-6, 13-19, 27, 47, and 54 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ishikawa et al, US Patent 4,933,768.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian T. Pendleton whose telephone number is (571) 272-7527. The examiner can normally be reached on M-F 7-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian Chin can be reached on (571) 272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

btp



**BRIAN TYRONE PENDLETON  
PRIMARY EXAMINER**

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EXAMINER**